IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 229 of 1994

with

INCOME TAX REFERENCE No. 237 of 1994

AND

INCOME TAX REFERENCE No 47 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

GORDHANBHAI JETHABHAI & SONS

Appearance:

1. INCOME TAX REFERENCE No. 229 of 1994
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and

MR.JUSTICE D.A.MEHTA

Date of decision: 19/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these three References at the instance of the revenue, the following question is referred for the opinion of this Court in respect of assessment years 1985-86 & 1986-87, 1985-86 and 1983-84 respectively:-

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in coming to the conclusion that the deposit in the firm was made by Gordhanbhai Jethabhai Javerbhai, HUF and not by the individual partner and so provision of sec. 40(b) would not apply ?"

2. We have heard Mr. M.R. Bhatt, learned counsel for the revenue. Though served none appears for the respondent-assessee.

3. At the hearing of these References, the learned counsel for the revenue fairly points out that in respect of this very controversy for another assessment year, the matter had gone upto the Supreme Court and by decision dated July 26, 2000 in CIT vs. Gordhanbhai Jethabhai Patel, the Supreme Court has held that the question whether deposit in the firm was made by the H.U.F. and not by an individual personally was a question of fact and that the Tribunal being a final fact finding authority it is not for the Court to interfere with such a conclusion.

4. We have perused the aforesaid decision of the Apex Court reported in (2001) 247 ITR 266. The question raised therein also read as under:-

"On the facts and in the circumstances of the case, and in law, whether the learned Commissioner of Income Tax (Appeals) was right in holding that the deposit in the firm was made by Gordhanbhai Jethabhai Zaverbhai, Hindu undivided family, and not by the individual partner and so the provisions of section 40(b) would not apply?"

5. Since the aforesaid question considered by the Supreme Court was identical to the question raised herein, we see no reason to take a different view. The question being a question of fact and the Tribunal being a final fact finding authority, we answer the question in

the affirmative i.e. in favour of the assessee and against the revenue.

6. The References accordingly stand disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-